In our opinion it is impossible to say that if the jury had been properly directed they would necessarily have come to the same conclusion. We therefore allow the appeal and the conviction is quashed.

Appeal Allowed.

NARAYANASAMY RAJARAM v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) September 23, 1949]

[Singapore — Magistrate's Appeal No. 89 of 1949]

Prevention of Corruption Ordinance, Ss. 3 and 3(a) — Penal Code, Ss. 161, 511 and 417 — Attempted cheating.

In this case a certain Sulaman bin Haji Hussain wanted to make a statutory declaration. He was directed to the appellant who was a clerk in the Stamp Office. The stamp fee on a declaration would have been $1/-. It appears from the evidence of Sulaman that the appellant asked for $3/-. From the evidence of a lift boy it was clear that the appellant was informed that $1/- was required for the stamp and $2/- for writing out the declaration. The duties of the appellant were confined to selling the stamp.

This came to the knowledge of the authorities and Sulaman was given $3/- and again approached the appellant. The appellant drafted a declaration as required by Sulaman who then gave the appellant $3/- of which $1/- was used for the stamp. The appellant kept the balance.

On the strength of this the appellant was charged under S. 3 of the Prevention of Corruption Ordinance and in the alternative under S. 161 of the Penal Code. At the beginning of the hearing the charges were amended and alternative charges were substituted. After the hearing was completed the learned District Judge substituted a charge of attempted cheating. On this charge the appellant was convicted and against this conviction he appealed.

Held, (1) that to support the conviction of attempted cheating it was necessary to show that the appellant attempted to delude Sulaman into the belief that the legal fee for a declaration was $3/-; (2) that the original and the substituted charges of corruption were ill-founded.

MAGISTRATE'S APPEAL.

D. K. Walters for the Appellant.

A. V. Winslow (D. P. P.) for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — The facts in this case are fairly simple and not seriously in dispute. A certain Sulaman bin Haji Hussain wanted to make a statutory declaration. He was directed to the appellant who was a clerk in the Stamp Office. The stamp fee on a declaration would have been $1.00. It appears from the evidence of Sulaman that the appellant asked for $3.00. From the evidence of the lift boy it is clear that the appellant was informed that $1.00 was required for the stamp and $2.00 for writing out the declaration. The duties of the appellant were confined to selling the stamp.

This came to the knowledge of the authorities and Sulaman was given $3.00 and again approached the appellant. The appellant drafted the declaration required by Sulaman who then gave the appellant the $3.00 of which $1 00 was used for the stamp. The appellant kept the balance.

On the strength of this the appellant was charged under the Prevention of Corruption Ordinance section 3 (a) as follows :—

> That he on or about the 6th day of July, 1949, at the Stamp Office, in the Supreme Court Building, being an Agent, namely a Clerk at the said Stamp Office, and as such an employee of the Government of the Colony of Singapore, corruptly accepted money, namely $2/- from one Sulaman bin Haji Hussain, to show favour to the said Sulaman bin Haji Hussain in relation to his principal's affairs, namely to make out a statutory declaration for the said Sulaman bin Haji Hussain, and that he thereby committed an offence punishable under section 3(a) of the Prevention of Corruption Ordinance (No. 41 of 1937).

and in the alternative under section 161 of the Penal Code :—

> That he, being a public servant in the Stamp Office, in the Supreme Court Building, accepted from one Sulaman bin Haji Hussain a gratification other than legal remuneration as a reward to show favour to the said Sulaman bin Haji Hussain, in the exercise of his official function, and that he thereby committed an offence punishable under section 161 of the Penal Code.

At the beginning of the hearing the charges were amended and the following substituted :—

> That he, on or about the 6th day of July, 1949, at or near the Government Stamp Office in the Supreme Court Building, Singapore, being an Agent, namely a G.C.S. Clerk at the said Government Stamp Office, and an employee of the Government of the Colony of Singapore, and as such a person serving under the Crown, corruptly obtained money, namely $2/- from one Sulaman bin Haji Hussain as a reward for showing favour to the said Sulaman bin Haji Hussain, in relation to his principal's affairs, such favour being the preparation of a Statutory Declaration for the said Sulaman bin Haji Hussain on a Government typewriter and during his hours of employment with the said Government, and he thereby committed an offence punishable under section 3 of the Prevention of Corruption Ordinance of 1937.
>
> *Alternatively :*
>
> That he, on or about the 6th day of July, 1949, at or near the Government Stamp Office in the Supreme Court Building, Singapore, being an Agent, namely a G.C.S. Clerk at the said Government Stamp Office, and an employee of the Government of the Colony of Singapore, and as such a person serving under the Crown, corruptly obtained money, namely $2/- from one Sulaman bin Haji Hussain, as a reward for doing an act in relation to his principal's affairs, namely the pointing out, to the said Sulaman bin Haji Hussain, of a person in the Stamp Office to

whom he advised a Statutory Declaration should be taken for stamping, and that he thereby committed an offence punishable under section 3 of the Prevention of Corruption Ordinance of 1937.

Alternatively :

That he, on or about the 6th day of July, 1949, at or near the Government Stamp Office in the Supreme Court Building, Singapore, being a Government Servant, namely a G.C.S. Clerk in the service of the Government of the Colony of Singapore, obtained from one Sulaman bin Haji Hussain, a gratification other than legal remuneration, namely the sum of $2/- as a reward for showing favour to the said Sulaman bin Haji Hussain in exercise of his official functions with the Government, namely by preparing during his hours of employment with the said Government, a Statutory Declaration for the use of the said Sulaman bin Haji Hussain which he was not entitled to do, and that he thereby committed an offence punishable under section 161 of the Penal Code.

After the hearing was completed the learned District Judge substituted a charge of attempted cheating in the following terms :—

That he, on or about the 6th day of July, 1949, at or near the Stamp Office in the Supreme Court Building Singapore, being a General Clerical Service Clerk employed in the said Stamp Office, attempted to commit an offence of cheating and in such attempt did a certain act towards the commission of the said offence to wit by deceiving one Sulaman bin Haji Hussain by telling him that it would cost him $3/- to obtain a Statutory Declaration form with the intent dishonestly to induce him to give him a sum of $2/- and thereby committed an offence punishable under sections 511 and 417 of the Penal Code.

On this charge the appellant was convicted and against this conviction he appealed.

I do not think that the conviction for attempted cheating can stand. To support this conviction it would be necessary to show that the appellant attempted to delude Sulaman into the belief that the legal fee for a declaration was $3.00. I think that the evidence of the lift boy negatives this. The $2.00 was for doing something which the appellant was not obliged to do and which Sulaman, who did not know English, had to get somebody to do for him.

I agree with the learned District Judge that the original and the substituted charges of corruption were ill-founded.

It is common knowledge that clerks in Government offices frequently help people to fill out forms, etc. This is in most cases outside their official duties. If they accept fees for doing this they do not, in my opinion, thereby commit a criminal offence. If there is deception as to the amount of the fee or if there is an element of duress such as a refusal to perform their duties unless they are paid fees of this kind, that is another matter as is the case where the doing of extra-official acts for reward is merely a disguised form of bribery. All these things were absent in the present case. The appellant had no discretion and there was no question of showing any favour.

How the taking of fees or honoraria should be regarded as a matter of internal discipline is not in question.

The appeal was allowed and conviction quashed.

Appeal Allowed.